

Message Text

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1. SET FORTH BELOW IS RESPONSE TO REFTEL. ANSWERS CONFORM TO
NUMERICAL SEQUENCE OF REFTEL.

2. POSSESSION: (1)(A) VENEZUELAN NARCOTIC LAW MAKES NO DIFFEREN-
TIATION FOR POSSESSION OF VARIOUS DRUGS, I.E., OPIATES, COCAINE;
AND ALL OTHER CONTROLLED SUBSTANCES (EG. AMPHETAMINES) FALL WITHIN
PURVIEW OF ARTICLE 367 OF CHAPTER III OF PENAL CODE. PENALTY
FOR POSSESSION IS IMPRISONMENT FOR A TERM OF FOUR TO EIGHT YRS.
(1)(B) POSSESSION OF ANY QUANTITY OF DRUG SUBSTANCES CONSTITUTES
OFFENSE; THIS UPHELD BY VENEZUELAN SUPREME COURT IN 1975 WHICH
CONFIRMED CONVICTION AND FOUR YEAR SENTENCE OF VENEZUELAN CITIZEN
IN POSSESSION 22 GRAMS OF MARIJUANA. (1)(C) PENALTIES OF FOUR TO
EIGHT YEARS IMPRISONMENT ARE METED OUT TO ALL CONVICTED OF DRUG
VIOLATIONS. ARTICLE 367 VERY BROAD IN THIS REGARD; IT STATES,
"HE WHO ILLICITLY COMMERCES, ELABORATES, UNLAWFULLY KEEPS AND, IN
GENERAL, COMMITS ANY ILLICIT ACT OF ADQUISITION, SUPPLY OR TRAFFICK-
ING..." EMBASSY HAS NOT NOTED ANY ENFORCEMENT OR JUDICIAL DISCRETION
IN APPLICATION OF LAW.

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3. TRAFFICKING(A): ALL CONTROLLED SUBSTANCES ARE CONSOLIDATED UNDER
AR-
TICLE 367. AGAIN, DEFINITIONS ARE VERY BROAD AND ALL ENCOMPASSING.
THE ARTICLE EEFINES NARCOTIC AS: OPIUM, ITS SALTS AND DERIVATIVES;
COCA, ITS LEAVES AND COCAINE; THE PLANT CALLED MARIJUANA, ITS SALTS
AND DERIVATIVES, AND "WHATEVER OTHER NARCOTIC OR WEAKENING SUBSTANCE.

"

IT IS THE LATTER DEFINITION OF "WEAKENING SUBSTANCES" UNDER WHICH JURISDICTION IS HAD FOR SUBSTANCES SUCH AS AMPHETAMINES AND BARBITURATES. (B) MINIMUM SENTENCE IS FOUR YEARS, MAXIMUM IS EIGHT YEARS; THERE IS NO PROVISION FOR BAIL OR PAROLE.

4. TRAFFICKING (C): WHILE LEGAL DEFINITIONS OF AN OFFENSE ARE BROAD, REALISTICALLY POSSESSION IS THE OFFENSE GENERALLY CHARGED AND, AS NOTED ABOVE, THERE ARE NO QUALIFYING AMOUNTS LEADING TO PROSECUTION.(D) THE VENEZUELAN LAW DOES CONTAIN A GENERAL CONSPIRACY STATUTE BUT, AGAIN REALISTICALLY, IT IS NOT USED BECAUSE OF PROBLEMS RELATED TO PROOF OF THE CONSPIRACY. POLICE AND PROSECUTORS FOLLOW A PRACTICAL POLICY OF "A BIRD IN THE HAND", I.E., THEY PROCEED ON POSSESSION CHARGES WHICH ALMOST ASSURES CONVICTION OF AT LEAST THE DEFENDANT IN ACTUAL POSSESSION OF THE SUBSTANCE. THE IMPORTATION AND EXPORTATION OF NARCOTIC SUBSTANCES ARE MARIJUANA ARE TREATED UNDER THE "LAW OF NARCOTICS" WHICH WAS PROMULGATED IN 1934, AND GENERALLY DEALS WITH THE LICIT TRADE IN DRUGS DEFINED AT THE GENEVA CONVENTION IN 1931. ACCORDINGLY, THE PENALTIES FOR FAILURE TO OBTAIN REQUIRED PROCEDURES ARE FINANCIAL; TO THE EMBASSY'S KNOWLEDGE, THIS ANTIQUATED LAW IS NOT UTILIZED, RATHER THE PROVISIONS OF CHAPTER III(SUPRA) APPLY.

5. CULTIVATION (A) AND (B): CHAPTER III ALSO PROHIBITS THE PLANTING, CULTIVATION OR POSSESSION OF SEEDS OR PLANTS THAT HAVE THE CHARACTERISTICS OF DRUGS DESCRIBED IN PARA 3 (SUPRA). PENALTIES FOR UNCLASSIFIED

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THIS OFFENSE ARE ALSO IMPRISONMENT FROM FOUR TO EIGHT YEARS. (C) THERE ARE NO SEPARATE PROVISIONS IN THE LAW RELATING TO THE ELABORATION OF DRUG SUBSTANCES FROM PLANT SOURCES.

6. FINANCIAL (A): THERE IS NO OFFENSE RELATED TO FINANCIAL SUPPORT OF ANY TYPE OF DRUG OPERATION, NOR DOES THERE APPEAR TO BE ANY CONCERN. (B) VENEZUELA DOES NOT HAVE ANY LAWS RELATING TO THE EXPORT OF CURRENCY OF FOREIGN BANK ACCOUNTS. LARGE CASH TRANSACTIONS IN US DOLLARS, FOR EXAMPLE, MAY RAISE SOME EYEBROWS BUT IT WILL NOT RESULT IN ANY INVESTIGATIVE ACTIVITY.

7. CRIMINAL PROCEDURE (A): ENFORCEMENT ENTITIES MAY DETAIN THOSE

ESTED FOR A PERIOD OF EIGHT DAYS WHILE THEY CONDUCT THEIR INVESTIGATION. AT THE END OF THIS PERIOD, THE ACCUSED APPEARS IN COURT WHERE THE JUDGE MAY ORDER AN ADDITIONAL EIGHT DAYS OF INVESTIGATIVE DETENTION. DURING THESE PERIODS, CONSULAR ACCESS IS PERMITTED. EMBASSY IS NOT ALWAYS FORMALLY NOTIFIED OF ARREST OF US CITIZENS DURING THE INITIAL (B) PERIOD WHICH CUSTOMARILY LASTS EIGHT DAYS.

8. CRIMINAL PROCEDURE (C): THERE IS NO AVERAGE LENGTH OF THE (I) TRIAL PROCESS; JUDICIAL PROCEEDINGS MAY LAST UP TO TWO YEARS AND THE DEFENDANT GIVEN CREDIT FOR TIME SERVED, IF CONVICTED. NEITHER IS IT POSSIBLE TO GAUGE THE TIME REQUIRED FOR (II) REVIEW/CONFIRMATION PROCEEDINGS OR (III) THE APPELLATE PROCESS. (D) PUBLIC DEFENDERS ARE NOT AVAILABLE BUT THERE ARE ADEQUATE LAWYERS WHO CHARGE FEES COMMENSURATE WITH THE GRAVITY OF THE CRIME CHARGED. THERE IS NO USUAL FEE, AS SUCH. A RULE OF THUMB WOULD BE THAT A DEFENDANT COULD EXPECT TO PAY THE MAXIMUM HE CAN AFFORD. AS EXAMPLES, A US CITIZEN PRESENTLY IN PRISON ON DRUG CHARGES SPENT SOME \$5,000.00 IN HIS DEFENSE; THREE DEFENDANTS IN A PENDING COCAINE CASE HAVE ALREADY SPENT OVER \$20,000.00 IN ATTORNEY FEES AND THE CASE HAS NOT YET BEEN JUDICIALLY CLOSED.

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9. CRIMINAL PROCEDURE (E): THE VENEZUELAN JUDICIAL SYSTEM HAS NO PROVISIONS FOR PAROLE OR CONDITIONAL LIBERTY. (F) AS NOTED ABOVE, THERE ARE NO QUALIFYING AMOUNTS FOR PROSECUTION; IT IS DOUBTFUL THAT ANY FOREIGN CITIZENS WOULD BE EXPELLED IN LIEU OF PROSECUTION ALTHOUGH AN UNOFFICIAL AMERICAN ARRESTED HERE RECENTLY IN POSSESSION OF TWO MARIJUANA CIGARETTES DID ELUDE PROSECUTION AT A COST OF \$5,000.00 IN LAWYER FEES. THE EMBASSY IS UNAWARE OF FULL DETAILS IN THE CASE, HOWEVER. AND WITHIN THE LAST WEEK, AN AMERICAN WAS ARRESTED IN POSSESSION OF FIFTY GRAMS OF COCAINE, A CASE IN WHICH IT APPEARS HE WILL BE PROSECUTED.

CROWLEY

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